IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO.1 OF 2006
IN
WRIT PETITION NO.165 OF 2004

Mr. Adolfo John Carvalho, son of)
Jose A. Carvalho, Having office at)
Old Bus Stand, Panaji, Goa.) ... Petitioner

Versus

1. Mr. Elias Fernandes,)
G-3, Ground floor, Antonio)
Pacheco Road, Borda, Goa, P.O.)
Fatorda.)
2. Mr. G.A. Parsekar,)
Deputy Director of Panchayat,)
Junta House, Panaji, Goa.)
3. Ranjit Borkar,)
Town and Country Planning)
Department, Govt. Building, 2nd)
floor, Opp. Municipal Garden,)
Ponda, Goa.)
4. Rajesh Naik,)
Member Secretary, North Goa)
Planning and Development)
Authority, Mala, Panaji, Goa.)
5. State of Goa,)
through Chief Secretary,)
Secretariat, Panaji, Goa.) ... Respondents

Mr. J. Godinho for the petitioner.

Mr. S.S. Kantak, Advocate General with Ms. Gauri Bhonsule, AGA for respondents 1 to 4.

CORAM : SMT. RANJANA DESAI, J.

DATED : 5th JULY, 2006.

JUDGMENT :-

1. The petitioner had filed a writ petition being Writ Petition No.165 of 2004 against the State of Goa, Deputy Director of Panchayat, Village Panchayat of Merces, The Secretary, Village Panchayat Merces, Panjim Planning Development Authority and M/s. Mark Builders (respondents 1 to 6 respectively) complaining about various illegalities committed by respondent 6 therein – M/s. Mark Builders. It was the case of the petitioner that M/s. Mark Builders had made construction in violation of approved plans and construction license. Details of the alleged illegalities were set out in the petition.

2. The petitioner had averred in that petition that after noticing the illegalities committed by M/s. Mark Builders, the petitioner by complaint dated 12/6/2003 brought them to the notice of the Panchayat, in terms of section 66 of the Goa Panchayat Raj Act, 1994 (for short, "the said Act"). It was his case that as per section 66 of the said Act, the Panchayat is bound to take action within 30 days of

receipt of the complaint. On failure of Panchayat to take action, the Deputy Director of Panchayat is empowered to assume powers of the Panchayat. Since no action nor any communication was received within a period of 30 days, as per section 60 of the said Act, the petitioner preferred a complaint under section 66(5) of the said Act calling upon the Deputy Director of Panchayat to assume the powers of the defaulting Panchayat and, thereafter, withdraw the Occupancy Certificate and demolish the illegal structure.

3. According to the petitioner, on 8/8/2003, he made a representation before the Panjim Planning & Development Authority since the Merces Panchayat area was brought within its jurisdiction calling upon the Panjim Planning & Development Authority to take necessary action against the illegal construction and not to regularize the same. According to him, on 6/8/2003, the Deputy Director of Panchayat had directed the Block Development Officer to conduct the site inspection and submit report. On 4/9/2003, the petitioner wrote a letter to the Block Development Officer, Tiswadi Taluka bringing to the notice

of the Block Development Officer that the directives of the Deputy Director of Panchayat to hold site inspection has been disobeyed.

4. It was the case of the petitioner that to defeat the pending proceedings, M/s. Mark Builders then filed Regular Civil Suit No.114/2003/A for a permanent injunction restraining the Block Development Officer from carrying out any inspection of the project.

5. On 16/9/2003, the petitioner addressed a representation to the Deputy Director of Panchayat and Panjim Planning & Development Authority bringing to their notice further illegalities being committed by M/s. Mark Builders. According to the petitioner, he produced sufficient evidence before the Deputy Director of Panchayat and the Panjim Planning & Development Authority to establish that the construction carried out by M/s. Mark Builders is not as per the approved plans and the construction license. However, no action was taken by them. Being aggrieved by the failure on the part of the

Authorities to proceed with and adjudicate upon the application under section 66(5) of the said Act and the complaint under section 52 of the Goa Town and Country Planning Act, 1974 the petitioner filed the said writ petition, inter alia, for an order directing the Deputy Director of Panchayat to proceed and adjudicate upon the complaint filed under section 66(5) of the said Act within two months. The petitioner also prayed for an order directing the Panjim Planning & Development Authority to adjudicate upon and dispose of the complaint filed under section 52 of the Goa Town and Country Planning Act, 1974 within two months.

6. On 7/6/2004, the said writ petition was heard for admission. After hearing the learned counsel for the parties, this court directed as under :

> "It is agreed upon between the parties that their representations made to respondent no.2 dated 28th July 2003, and respondent no.3, dated 8th August 2003, respectively,

> are required to be disposed of as expeditiously as possible. Therefore, respondents 2 and 5 are, hereby, directed to dispose of the representations filed by the petitioner as expeditiously as possible, preferably within a period of one year from today. All contentions raised in the petition are left open."

7. In this contempt petition, it is the case of the petitioner that the time stipulated in the above order directing the Deputy Director of Panchayat and Panjim Planning & Development Authority to dispose of the representations within one year expired on 6/6/2005. However, the contemnors viz. the Deputy Directors of Panchayat Mr. Elias Fernandes and Mr. G.A. Parsekar, Mr. Ranjit Borkar, the Deputy Town Planner, Town and Country Planning Department, Government of Goa, and Mr. Rajesh Naik, Member Secretary, North Goa Planning and Development Authority, in spite of being aware of the said order, intentionally, purposely and in order to defy the

directions contained in the said order, have not taken any necessary steps. It is prayed that in the circumstances, appropriate contempt proceedings be initiated against the respondents/contemnors for disobeying the order of this court.

8. In response to the petition, affidavits have been filed by respondent 1 - Elias Fernandese, respondent 2 – G.A. Parsekar, respondent 3 – Ranjit M. Borkar and respondent 4 – Rajesh Naik. The petitioner has filed his affidavit in rejoinder.

9. I have heard Mr. Godinho, the learned counsel appearing for the petitioner. He contended that the respondents have not denied that they have failed to comply with the order of this court dated 7/6/2004. He submitted that there is no explanation for non-compliance of this court's order. The respondents have shown scant regard for the orders of this court. He pointed out that the explanation given by the respondents that the civil suit filed by M/s. Mark Builders was pending and that a

status-quo order was passed therein, is totally unacceptable. He submitted that the said order was only for a limited period and was not in operation all through out. He submitted that this fact was known to the respondents/contemnors as Block Development Officer is a party to the suit. The order was only "till filing of the reply in C.M.A." The suit was fixed on 17/1/2004 and on that day, defendants 2 and 3 filed a written statement along with affidavit in reply. Therefore, the status-quo order passed on 6/11/2003 was vacated on 17/1/2004. Therefore, there was no reason for the contemnors not to carry out this court's order after 17/1/2004. The learned counsel pointed out that it is stated by M/s. Mark Builders in their reply to the application under section 12 of the Contempt of Courts Act in R.C.S. No.114/2003/A that inspection was held on 6/11/2003. However, the Block Development Officer intentionally did not submit the report. The learned counsel contended that the conduct of the contemnors must be deprecated. To maintain the dignity and authority of this court, it is necessary to

initiate action against the contemnors under the Contempt of Courts Act.

10. On the other hand, Mr. Kantak the learned Advocate General, appearing for the contemnors contended that the fact that the civil court had passed the status-quo order on 6/11/2003 is admitted by the petitioner. Though the order is to operate only till filing of the reply by the respondents, there is no automatic vacation of the order of stay. The learned Advocate General contended that a stay order passed by a court does not stand vacated by lapse of time. Unless it is specifically vacated, it continues to operate. The learned Advocate General contended that in any event, the contemnors were under a bona fide impression that the status-quo order was in operation. Though the Block Development Officer is a party to the suit, the order was inadvertently not conveyed to the contemnors. Because of the bona fide impression that the status-quo order was in operation, the contemnors did not process the representations of the petitioner. It cannot be said, therefore, that the order of this court was

intentionally disobeyed by the contemnors. There was no mala fide intention. The learned Advocate General urged that in the circumstances, the contempt notice be discharged.

11. There is no dispute about the fact that the order dated 7/6/2004 passed by this court has not been complied with by the contemnors. Before we deal with the explanation offered by the contemnors, it is necessary to state that the 1st and 2nd contemnors have filed affidavits dated 26/6/2006 and 3rd and 4th contemnors have filed affidavits dated 30/6/2006 stating that in case, this court is not satisfied with the explanation offered by them in their detailed affidavits, they are tendering an unconditional apology to this court, which may be accepted.

12. The 1st contemnor - Mr. Elias Fernandes, the Deputy Director of Panchayat, has stated in his detailed affidavit that the petitioners grievance was considered and a memorandum dated 20/7/2004 was issued to the Block

Development Officer, Tiswadi, to submit the report so as to commence the proceedings under section 66(5) of the said Act. The Block Development Officer by his letter dated 26/8/2004 informed that the inspection was fixed on 26/8/2004. Notices were issued on 16/8/2004 to the petitioner. The Block Development Officer in his letter further stated that he was informed by M/s. Mark Builders vide its letter dated 21/8/2004 that M/s. Mark Builders had obtained status-quo order from the Civil Court in Special Civil Suit No.114/03/OA and that the Secretary of the Village Panchayat by his letter dated 25/8/2004 informed him that the civil suit is sub-judice and the site inspection fixed on 26/8/2004 should not be held in order to avoid court contempt proceedings. Hence, the inspection could not be conducted. The 1st contemnor has further stated that on a request made by the Block Development Officer, a copy of the order dated 7/6/2004 was sent to him vide his office letter dated 11/10/2004 with direction to submit the report at the earliest. He also issued a reminder dated 31/1/2005 to the Block Development Officer. It is further stated in the affidavit

that the Block Development Officer vide his letter dated 15/2/2005 informed that the inspection could not be carried out due to representation of M/s. Mark Builders that the status-quo order passed by the civil court is in force. The Block Development Officer also informed that the site inspection was earlier fixed on 6/11/2003 but the report as to whether it was conducted or not is not available. The Block Development Officer requested that suitable instructions be given to him to act in the matter. The 1st contemnor has further stated in his affidavit that he could not initiate action under sub-section (5) of section 66 of the said Act for want of panchanama, report and sketch of the illegal construction from the Block Development Officer till 31/3/2005, which is the date of his retirement from the Government service. He has further stated that during the relevant period, he was busy with the work of election to the Zilla Panchayat. He has explained that the letter dated 10/2/2005 sent by the petitioner which was addressed to him was not replied by the Deputy Director of Panchayat as the person who was looking after the court matters retired in February 2005

and the person who took over that work was unaware of the directions. This affidavit indicates that the 1st contemnor had initiated action on the petitioner's representation. However, the Block Development Officer informed him about the civil suit filed by M/s. Mark Builders and the status-quo order passed therein. Because of this status-quo order, the Block Development Officer did not take the necessary steps such as making a panchanama and submitting a report about the stage of illegal construction, etc. to the 1st contemnor and, therefore, the 1st contemnor could not initiate proceedings under sub-section (5) of section 66 of the said Act till he retired on 31/3/2005. It is also apparent from the affidavit of the 1st contemnor that during this period, he was busy with the work pertaining to the elections to the Zilla Panchayat and because the regular Director of Panchayat was on medical leave, he had to attend to the election work.

13. The 2nd contemnor - Mr. G.A. Parsekar, the Deputy Director of Panchayat has also filed an affidavit. The 2nd

contemnor took charge of the post of Deputy Director of Panchayat on 1/4/2005. The 2nd contemnor has stated that he could not take further steps in the matter in view of the status-quo order passed in the civil suit. In this behalf, he has adopted the affidavit of the 1st contemnor. It appears that the 2nd contemnor was transferred on 22/2/2006 as Chief Officer of Curchorem Cacora Municipal Council.

14. The 3rd contemnor - Mr. Ranjit M. Borkar, who was appointed as Deputy Town Planner of Ponda Taluka vide Government Order dated 21/11/2005 has also filed his affidavit. He has stated that the Government of Goa vide Notification No.4-5-2-84-UDD(Part) 05/483 dated 4/2/2005, in exercise of powers conferred by sub-section (1) of section 19 of the Town & Country Planning Act, 1974, withdrew from the operation of the Town & Country Planning Act, the whole planning areas from the jurisdiction of the Panaji Planning & Development Authority with immediate effect. As such, the area under dispute i.e. Murda Village was no longer within the

jurisdiction of the Panaji Planning & Development Authority since 4/2/2005. He has further stated that consequent upon the withdrawal of the planning areas as stated hereinabove, the Government of Goa appointed certain officers as Custodians for respective erstwhile Planning & Development Authorities vide order No.4/5/UDD/Part-05/685 dated 28/2/2005 to discharge certain duties and functions. The 3rd contemnor has stated in the affidavit that he was then appointed as Custodian of erstwhile Panaji Planning & Development Authority vide order dated 28/2/2005. Pursuant to his appointment, he forwarded all the pending files of withdrawn areas to Tiswadi Branch Office of Town & Country Planning Department. According to him, the present case was also forwarded for further action to the Town & Country Planning Department, Tiswadi Branch. The 3rd contemnor has further stated that the petitioner approached the erstwhile Panaji Planning and Development Authority with a reminder. However, the erstwhile Panaji Planning & Development Authority did not accept his reminder dated 10/2/2005 as the Panaji

Planning & Development Authority was no longer in existence. Hence, no action could be initiated since then. The 3rd contemnor has further stated that by order dated 3/8/2005, he was transferred as Custodian of erstwhile Ponda Planning & Development Authority. He has then set out the reasons for delay of eight months during which period, the areas under dispute were within his jurisdiction. He has stated that he was looking after the development cases of Tiswadi and Bardez Talukas. He had to look after 21 Village Panchayats and Panaji Municipal Council. He was also directed by the Government to prepare O.D.P.'s for planning areas of newly included areas within the jurisdiction of Panaji Planning & Development Authority. The staff allotted for this work was restricted and, hence, this work was time consuming. The Panaji Planning & Development Authority had undertaken the work of Mala Market and, hence, he was busy with routine supervisions and meetings with the Architectural and Engineering Consultants. He had also to look after the development works like construction of roads and other infrastructure within the jurisdiction of Panaji

Planning & Development Authority. He had also to attend to cases of acquisition of land and other court matters. According to him, during the eight months' period, with which he is concerned, the concerned Panchayat has also not made any correspondence for any technical advise to Panaji Planning & Development Authority as regards any violation because the matter was sub-judice and also because, it was pending in the office of the Director of Panchayat, who was supposed to give directives regarding action to be initiated. Basically, it is the case of the 3rd contemnor that since the concerned area was removed from the jurisdiction of Panaji Planning & Development Authority, necessary steps to dispose of the representation within the time frame set down by the High Court could not be taken. He was also under pressure of work and no correspondence was made by Panjim Planning & Development Authority because of the case which was sub-judice.

15. The 4th contemnor – Mr. Rajesh Naik, who is the Member Secretary, North Goa Planning & Development

Authority, Panaji, Goa, has also filed an affidavit. He has stated that he has been wrongly joined as party to the petition. According to him, in exercise of powers under section 19 of the Town & Country Planning Act, the Government withdrew all the areas within the jurisdiction of Panaji Planning & Development Authority. As a result, the subject matter of the complaint dated 16/1/2003 was no longer within the jurisdiction of Panaji Planning & Development Authority. According to him, the subject property was initially included within the planning area of North Goa Planning & Development Authority. However, by notification dated 3/1/2006, the said area ceased to be a planning area of North Goa Planning & Development Authority.

16. So far as the 1st, 2nd and 3rd contemnors are concerned, it appears from their affidavits that it is on account of the status-quo order passed by the civil court in the suit filed by M/s. Mark Builders that they did not pursue the matter. They were under a reasonable and bona fide belief that the status-quo order was in operation.

The Block Development Officer had not informed them that the status-quo order was to operate only till the affidavits were filed by the defendants and that after the defendants filed their affidavits, the said order ceased to exist. It is true that as pointed out by the learned counsel for the contemnors, the Block Development Officer had carried out the inspection. But it appears that he did not take further steps because of the status-quo order. It appears that the 1st contemnor was under the impression that the inspection was not carried out. No doubt, the authorities ought to have been more careful. They ought to have verified whether the status-quo order was in fact in operation or not. There appears to be a total lack of communication between the different authorities of the Government. They should have been diligent particularly when they were concerned with the order passed by this court. It was their duty to ensure compliance of the order of this court. It does appear that the 1st and 3rd contemnors were busy with their official duty of pressing nature. Pressure of work, however, can be no excuse for non-compliance of this court's order. They ought to have

been more alert. They are under a legal obligation to comply with the court's order.

17. From the affidavit of the 4th contemnor, it appears that his case is that the concerned area ceased to be a planning area of North Goa Planning & Development Authority from 3/1/2006 and, therefore, there was no question of his taking action in the matter. The High Court's order is dated 7/6/2004. The 4th contemnor has not given any explanation as to why from 7/6/2004 to 3/1/2006 he has not taken any action. There is no proper explanation given by the 4th contemnor.

18. Though the conduct of the contemnors is not happy, I feel that there is no willful flouting of this court's order. It is the wrong impression of the order passed by the civil court carried by the contemnors which has resulted in non-compliance of this court's order. The only redeeming feature in this case is the statement made by the learned Advocate General that the order of this court will be complied with within four months from today. Taking into

consideration the above facts and the fact that an unconditional apology has been tendered by the contemnors and the fact that the learned Advocate General has assured the court that within a period of four months from today, the order of this court will be complied with, I deed it fit to discharge the contempt notices issued to the contemnors. In the circumstances, I accept the apology tendered by the contemnors. I direct the contemnors to comply with the order dated 7/6/2004 within a period of four months from today as per the statement made by the Advocate General. I hope and trust that in future the State Government acts swiftly and diligently and ensures compliance of the orders of this court. In view of the above, I discharge the contempt notices issued to the contemnors. The contempt petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)